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Xiangcheng Yisheng Foodstuffs Co., Ltd.  
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MEMORANDUM TO: James J. Jochum  
Assistant Secretary  
for Import Administration

FROM: Jeff May  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the New  
Shipper Review of the Antidumping Duty Order on Fresh Garlic  
from the People's Republic of China

Summary

We have analyzed the case and rebuttal briefs of interested parties in the new shipper review of Xiangcheng Yisheng Foodstuffs Co., Ltd. ("Yisheng"), under the antidumping duty order on fresh garlic from the People's Republic of China ("PRC"). The period of review ("POR") covers November 1, 2001, through October 31, 2002. For the final results of review, we have determined that it is appropriate to base Yisheng's antidumping margin on AFA. We recommend that you approve the positions that we have developed in the "Discussion of the Issues" section of this memorandum. Below is the list of the issues for which we received comments and rebuttal comments by parties in this review:

1. Use of Adverse Facts Available
2. Supplier is Not an Interested Party
3. AFA Should Have Been Applied Only to the FOP Segment

## Background

On December 31, 2002, the Department of Commerce (“the Department”) initiated a new shipper antidumping duty review of shipments of fresh garlic from the People’s Republic of China (PRC) exported by Yisheng. See Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People’s Republic of China, 68 FR 542 (January 6, 2003). On December 31, 2002, the Department issued a questionnaire to Yisheng in which it requested the factors-of-production (“FOP”) data from the producer. The Department granted a number of extensions to Yisheng to file its response to the questionnaire and, in total, extended the deadline from February 7, 2003, to April 1, 2003. Specifically, on January 23, 2003, the Department granted a two-week extension for Yisheng to file its response to the original questionnaire. On February 26, 2003, five days after the February 21, 2003, deadline, Yisheng submitted an improperly filed extension request. Nonetheless, the Department decided to correct the filing deficiencies, accept the submission, and grant a three-week extension to file its questionnaire response. On March 12, 2003, the Department granted yet another extension to Yisheng, moving the deadline from March 14, 2003, until April 1, 2003. Finally, the Department received Yisheng’s partial response to the Department’s original questionnaire on April 1, 2003.

The Department determined that it could not use Yisheng’s FOP data because the information provided was inadequate and internally inconsistent. Therefore, on June 2, 2003, the Department sent Yisheng a supplemental questionnaire requesting a new FOP submission and clarification on other parts of its response. On June 20, 2003, the Department received Yisheng’s response to the supplemental questionnaire, but its submission did not include a FOP response. Yisheng stated that it omitted FOP information because it did not own a photocopying

machine, its sole printer was a 20-year old dot-matrix printer, no one at the company spoke English, and the data had to be obtained from third parties.

Almost two months later, on August 13, 2003, in response to a telephone call from Yisheng's counsel stating that Yisheng would file its FOP response soon, the Department informed Yisheng's counsel that it would reject such a response because it would be untimely. On August 18, 2003, 59 days past the June 20, 2003, deadline, and 173 days after the information was requested in the Department's original questionnaire, Yisheng submitted a FOP response.

On August 19, 2003, Yisheng filed a submission requesting that the Department accept its August 18, 2003, submission and claimed for the first time that its unaffiliated supplier was not cooperating. Specifically, Yisheng claimed that, “{o}nly after the Department's deadline for this supplemental response, did the grower, Yuyu, agree to allow Yisheng's outside accountants to visit it and collect data to answer the questions relevant to it.” Yisheng did not provide an explanation, however, as to why its supplier would not cooperate and did not provide an explanation as to why it had not identified the supplier's unwillingness to cooperate earlier.

The Department rejected the August 18, 2003, submission for the following reasons: (1) it was untimely filed, (2) Yisheng did not demonstrate that that it acted to the best of its ability in providing the requested information, and (3) the information could not be used without undue difficulties. See Letter from Laurie Parkhill to Yisheng, dated September 3, 2003.

On September 26, 2003, the Department published the preliminary results of review in which it based Yisheng's antidumping margin on adverse facts available (“AFA”). See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New

Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd., 68 FR 55583 (September 26, 2003) (“Preliminary Results”). We invited parties to comment on our preliminary results.

On October 27, 2003, we received a case brief from Yisheng in response to our request for comments. On November 3, 2003, the petitioners, the Fresh Garlic Producers Association<sup>1</sup> and its individual members, submitted a rebuttal brief in response to Yisheng’s case brief.

On November 5, 2003, the Department conducted a hearing concerning the issues raised in the case briefs and rebuttal briefs.

### Discussion of the Issues

#### 1. Use of Adverse Facts Available

Comment 1: Yisheng claims that it did not withhold information under section 776(a)(2)(A) of the Tariff Act of 1930, as amended (“the Act”), because Yuyu refused Yisheng’s numerous requests for the FOP information initially despite Yisheng arguing with Yuyu repeatedly and relentlessly to provide it. Yisheng asserts that, because it did not possess the data, it was incapable legally of withholding it. Finally, Yisheng claims that the fact that it submitted data in response to the Department’s questionnaire is prima facie evidence of its full cooperation and that it withheld nothing.

Department’s Position: As stated in the Preliminary Results, the Department considers that, by not submitting an adequate FOP response and regardless of its intentions, Yisheng withheld necessary information within the meaning of section 776(a)(2)(A) of the Act.

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<sup>1</sup> The members of the Fresh Garlic Producers Association are Christopher Ranch LLC, Farm Gate LLC, The Garlic Company, Spice World, Inc., and Vessey and Company, Inc.

New shipper reviews are unique in that they can only be initiated upon the request of the foreign manufacturer or exporter. As a self-requesting new shipper in a non-market-economy country (“NME”) proceeding, Yisheng had an obligation to provide the Department with the necessary FOP data. In NME proceedings, FOP data is necessary to calculate a dumping margin because the Department must use constructed value to determine normal value. See section 773(c)(1) of the Act. In general terms, the basic formula to calculate the cost-of-manufacturing component of constructed value in an NME proceeding is to multiply the consumption amount for each input (e.g., raw materials, labor, etc. (or FOP)) used in production of the subject merchandise by a surrogate value for each input and then sum the resulting figures. The FOP data missing from Yisheng’s initial responses entails all of the different types of inputs and the amounts of each input needed to produce the subject merchandise. Without the FOP data, it is impossible for the Department to calculate the cost-of-manufacturing component of constructed value for the respondent. Thus, absent complete FOP information, the Department cannot calculate an accurate constructed value for Yisheng’s sale of the subject merchandise and, therefore, cannot calculate an accurate dumping margin for the U.S. sale at issue.

In Policy Bulletin 03.2, dated March 4, 2003, we stated that “benefits of the new shipper review {will} *not* apply to... {s}ales by the exporter of subject merchandise produced or supplied by companies that did not cooperate in responding to any information requests during the new shipper review” (<http://ia.ita.doc.gov/policy/bull03-2.html>) (emphasis in the original).

Accordingly, it is the Department’s policy that a “new shipper” has an affirmative obligation to supply all necessary data, including FOP data. Further, a producer of subject merchandise is specifically an “interested party” under the definition of that term in section 771(9) of the Act

and, under section 776(b) of the Act, the application of AFA is warranted if an “interested party” has failed to provide necessary information to the Department, by the deadlines for submission specifically provided in the Department’s questionnaire, to the best of its ability. See sections 776(a)(2)(A), (B), and 776(b) of the Act. Thus, if the producer’s information is required (as it was here) and not provided, the application of facts available is appropriate. Furthermore, if the Department determines that either the exporter or the producer did not act to the best of its ability, the use of AFA is appropriate as well.

The Department applied this policy and application of sections 776(a) and (b) of the Act in the last new shipper review under this order. See Fresh Garlic From the People’s Republic of China: Final Results of Antidumping Duty New Shipper Review, 68 FR 36767 (June 19, 2003) (applying AFA when respondent failed to provide FOP data in a timely manner because of an uncooperative supplier). See also Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504 (April 21, 2003), and accompanying Issues and Decision Memorandum, Comment 7 (“Crawfish”) (applying AFA to a respondent which failed to provide total production and FOP data for the period of review in a timely manner; we determined that the respondent did not act to the best of its ability to comply with our request for information); Notice of Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke From the People’s Republic of China, 68 FR 57869 (October 7, 2003) (applying AFA to a respondent which failed to provide FOP information and failed to act to the best of its ability).

The facts of this case substantiate that Yisheng withheld information from the Department. Yisheng had ample notice that it needed the participation of its supplier, Yuyu, and

provided information to the Department suggesting that Yuyu would be cooperative. Specifically, Yisheng requested this review on May 31, 2002, and in this request Yisheng submitted the required certification signed by Yuyu indicating that Yuyu produced the garlic Yisheng shipped to the United States. Furthermore, in the questionnaire we sent on December 31, 2002, we instructed Yisheng to provide the FOP data of its grower. Despite the Department's prompt notification to the parties of the reporting requirements of the new shipper review, in the April 1, 2003, questionnaire response, Yisheng and Yuyu did not provide the required FOP data. Also, in the supplemental questionnaire we sent on June 2, 2003, we instructed Yisheng again to submit the FOP data of its grower by the June 16, 2003, deadline (extended to June 20, 2003) or face the possibility of the use of AFA. Yisheng had almost a year to coordinate with Yuyu and obtain the information the Department requested, but it did not do so. Moreover, the reporting requirements for Yisheng were much less than for many other respondents because Yisheng only had two shipments of garlic to the United States and they were from the same supplier.

As we explain in response to Comment 4 below, Yisheng did not cooperate fully with our requests for information during the new shipper review, and Yisheng's behavior did not demonstrate a pattern of behavior that would allow us to conclude that it acted to the best of its ability. With regard to Yuyu, as explained in response to Comment 7, below, it had an obligation to provide the requested information in a timely manner. Yuyu was aware of the need to provide the information to the Department and never explained why it was unwilling to cooperate. By not responding to our requests for information in a timely manner or notifying us of complications that it was having with submitting the information, it failed to act to the best of

its ability. In prior segments of this proceeding where companies did not respond to our questionnaire within the time requirements we established, we determined that they had failed to cooperate by not acting to the best of their ability. See, e.g., Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review, and Intent to Rescind Administrative Review in Part, 67 FR 51822, 51825 (August 9, 2002), and Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part for Fresh Garlic from the People's Republic of China, 68 FR 4758, 4759 (January 30, 2003). Accordingly, we find that both Yisheng, the exporter requesting the new shipper review, and Yuyu, the producer with immediate access to the FOP information, failed to act to the best of their abilities in providing timely responses to our questionnaire.

Finally, Yisheng's claim that it tried relentlessly to persuade Yuyu to provide it with the FOP data is a new argument, unsupported by evidence on the record. There was no mention of this problem when Yisheng submitted its extension requests or when it submitted its original response to the questionnaire on April 1, 2003, and there was no mention of this problem when it submitted its response to the supplemental questionnaire on June 20, 2003, in spite of the fact that there was no FOP data submitted with either response. In fact, Yisheng did not claim that it was having difficulties with its supplier for the provision of the FOP data until its August 19, 2003, submission, 60 days past the deadline for the FOP data. More significantly, this problem was not reported to the Department until after the Department had informed Yisheng on August 13, 2003, that any submission of FOP data would be rejected as untimely. In Yisheng's case brief, it claims that it explained to the Department that it was unable to provide FOP data

because, among other reasons, the “data must be obtained from third parties.” This statement in no way suggests that Yisheng’s supplier was refusing to provide it with the required FOP information. Rather, it reiterated an obvious fact that Yisheng had known for at least six months (i.e., that the FOP data for its response to the Department’s questionnaire had to be supplied by Yuyu).

Thus, the record does not support Yisheng’s claim that it acted to the best of its ability such that an adverse inference is not warranted. Furthermore, as a “new shipper,” Yisheng failed to provide the Department with the information that it knew the Department would need to conduct the requested new shipper review before the review was even initiated. Thus, its attempts in August 2003 to collect this necessary information were extremely late in the review and do not reflect Yisheng’s claim of “best efforts.”

For the reasons discussed above, we find that Yisheng did not provide us with necessary information in accordance with section 776(a) of the Act and did not act to the best of its ability in providing this information in accordance with section 776(b) of the Act. Thus, the application of AFA is warranted in this case.

Comment 2: Yisheng contends that it did not fail to provide information requested by the Department in a timely manner under section 776(a)(2)(B) of the Act as claimed by the Department in the Preliminary Results because, although the FOP data was untimely filed, Yisheng did not possess the data.

The petitioners argue that the Department was justified in concluding in the Preliminary Results that Yisheng failed to provide information in a timely manner. They emphasize the

strong interest that the Department has in ensuring that parties submit information in a timely manner, given the statutorily mandated deadlines.

Department's Position: As stated in the Preliminary Results and above in response to Comment 1, the Department finds that, because Yisheng did not submit FOP data by the deadline of June 20, 2003, the respondent failed to provide information requested by the Department in a timely manner under section 776(a)(2)(B) of the Act. Further, given the importance of FOP data to this review and the obligations of respondents in new shipper reviews to obtain the FOP data from their suppliers, both interested parties, Yisheng and Yuyu, had an affirmative obligation to provide this information to the Department in a timely manner. They did not do so. Furthermore, the degree of tardiness, 59 days after the deadline and nearly eight months after the original questionnaire was sent, justifies the Department's rejection of Yisheng's August 18, 2003, submission. Finally, the Department has the right to set deadlines and enforce them to ensure the timely completion of segments of a proceeding. Yisheng's attempt to create a self-dictated extension in this case for the submission of information is completely unacceptable and substantially impeded the Department's ability to conduct a review in accordance with the time constraints set by the Act and the regulations. See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214 (b)(i).

For all of these reasons, the Department rejects Yisheng's argument that its late submission did not warrant the application of facts available. Yisheng "fail{ed} to provide...information by the deadline for submission of the information..." See section 776(a)(2)(B) of the Act. Thus, the application of facts available is warranted.

Comment 3: Yisheng claims that it did not significantly impede the review under section 776(a)(2)(C) of the Act as claimed by the Department in the Preliminary Results because there was still sufficient time to use the FOP data.

The petitioners argue that Yisheng impeded the review by not submitting the FOP information until two months after the deadline. They argue further that the FOP information was the most extensive information to be submitted in the review and that submitting it 59 days late substantially curtailed the Department's ability to analyze it. The petitioners add that Yisheng's August 18, 2003, submission was incomplete.

Department's Position: In the Preliminary Results, the Department found that Yisheng significantly impeded this review by not providing an adequate FOP response for the following reasons: (1) the FOP information is necessary to calculate a margin, (2) as a self-requesting new shipper, Yisheng has an affirmative obligation to respond, (3) Yisheng's first FOP response was grossly inadequate, (4) Yisheng did not submit a subsequent response to the request for FOP information until 59 days after the deadline. The Department still considers the reasoning it outlined in the Preliminary Results to be valid.

We disagree with Yisheng's claim that it did not significantly impede the review. Yisheng's first and second responses were grossly inadequate and incomplete and, as such, required a great deal of time to analyze and interpret, despite the fact that Yisheng was given a considerable amount of time to complete its responses. Moreover, its failure to submit the requested FOP data in a timely manner significantly reduced the amount of time under the statutory deadlines of the review for analyzing Yisheng's FOP submission, issuing supplemental questions, conducting verification, valuing the FOP data, calculating a margin, and preparing the

notice and memorandum for the preliminary results of review. Finally, even if there had been enough time to consider Yisheng's FOP data, it still would not be enough to overcome the fact that Yisheng significantly impeded this review by withholding information that it knew the Department needed for the calculation of normal value.

Comment 4: Yisheng claims that it acted to the best of its ability under section 776(b) of the Act because it only has two administrative employees, the proceeding took place in the middle of the harvesting/processing stage, it pleaded relentlessly with its unaffiliated supplier, and it explained clearly that it was unable to provide the FOP data in a timely manner. Yisheng also argues that the Department must find either a willful decision on the part of the respondent not to comply or behavior below the standard for a reasonable respondent. Citing Krupp Thyssen Nirosta GmbH v. United States (CIT 2000), Yisheng argues further that willfulness has been defined by the court as the deliberate decision not to comply with an information request.

The petitioners argue that Yisheng withheld the FOP data and, by doing so, did not act to the best of its ability. They quote Nippon Steel Corporation v. United States, 337 F.3d 1373, 1382 (August 8, 2003), where the U.S. Court of Appeals for the Federal Circuit concluded that "the statutory mandate that a respondent act 'to the best of its ability' requires the respondent to do the maximum it is able to do." The petitioners claim that Yisheng did not do the maximum it was able to do for various reasons. First, they argue that it should have been obvious from the beginning that the full cooperation of its supplier was necessary for the calculation of normal value. Further, they cite that the original questionnaire required Yisheng to forward the FOP portion to the producer of the garlic immediately and that the supplemental questionnaire requested expressly that Yisheng's supplier provide the data. Second, the petitioners argue that

the fact that the stated reasons for not submitting the FOP data in its June 20, 2003, response did not indicate that Yisheng was having problems with its supplier and the fact that this problem was not specifically identified until August 20, 2003, justifies the Department's conclusion that Yisheng did not act to the best of its ability. Third, the petitioners claim that Yisheng should have made a commitment as to when the missing FOP data would be submitted. Fourth, they argue that the FOP data submitted on August 18, 2003, could not be used without undue difficulty because it was incomplete and unsupported by normal accounting and production data maintained by its supplier in its normal course of business. Finally, citing Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 68 FR 22676 (April 29, 2003), the petitioners assert that, because the Department has taken the position that unaffiliated suppliers can be considered to be "interested parties" whose failure to cooperate can fairly be attributed to a respondent, the lack of cooperation by Yisheng's producer is no defense.

Department's Position: In the Preliminary Results, the Department found that Yisheng did not act to the best of its ability to comply with a request for information and, consequently, applied AFA. The basis of this determination was that valid FOP information was needed to calculate a margin, Yisheng had an affirmative responsibility to provide the necessary FOP information, Yisheng had ample time (more than any other company in this new shipper review) to submit the requested production-process information and FOP data, and Yisheng did not provide this necessary information in a timely manner. We still consider the reasoning of the Preliminary Results to be valid.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. See also the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. 316, Vol. 1, 103d Cong. (1994), at 870. In determining whether a respondent has failed to cooperate to the best of its ability, the Department need not make a determination regarding the willfulness of a respondent's conduct. See Nippon Steel Corporation v. United States, et. al, 337 F. 3d 1373, 1382-1383 (Fed. Cir. 2003). Instead, the courts have made clear that the Department must articulate its reasons for concluding that a party failed to cooperate to the best of its ability and explain why the missing information is significant to the review. Id. In determining whether a party failed to cooperate to the best of its ability the Department considers whether a party could comply with the request for information and whether a party paid insufficient attention to its statutory duties. See Pacific Giant Inc., et. al v. United States, et. al, 223 F. Supp. 2d. 1336, 1342 (CIT 2002). The Department must also draw some inferences from a "pattern of behavior." Reiner Brach GmbH & Co. KG v. United States, 206 F. Supp. 2d 1323, 1137 (CIT 2002). Furthermore, to determine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b) of the Act, the Department also considers the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819-53820 (October 16, 1997).

The Department has determined that the use of an adverse inference is warranted in this case. Yisheng did not act to the best of its ability in providing the information necessary to conduct this review. Not only did Yisheng fail to provide the necessary information, Yisheng failed to make adequate responses on several occasions. The Department granted three extensions for Yisheng to file its original response, even when Yisheng submitted its extension request five days past the deadline for its questionnaire response. In the end, Yisheng was given 91 days to submit its response, 29 days more than any other respondent in this review. Nonetheless, the Department determined that the FOP section of Yisheng's April 1, 2003, submission was inadequate and internally inconsistent and it could not be used. Moreover, in its next submission on June 20, 2003, Yisheng did not submit any response to the FOP section of the questionnaire. Finally, Yisheng submitted its FOP response 59 days past the deadline. Under the circumstances of this review, the Department considers that more forthcoming responses should have been made, that Yisheng did not provide its full cooperation, and that Yisheng's behavior did not demonstrate a pattern of behavior which would allow the Department to conclude that it acted to the best of its ability.

We disagree with Yisheng's assertion that the timing of the harvesting/processing stage and the number of administrative employees in its company justifies that it was unable to supply the FOP data in a timely manner. This review was initiated on December 31, 2002, and the last deadline for submission of the FOP data was June 20, 2003. Yisheng was well aware of its resource limitations and business obligations at the time it requested this new shipper review and did not act to the best of its ability when it failed to notify the Department in a timely manner

that such circumstances would conflict with its ability to provide information that is essential to the calculation of its antidumping margin.

In conclusion, the Department has determined for all the reasons provided above that Yisheng failed to act the best of its ability in accordance with the section 776(b) of the Act.

Comment 5: Yisheng argues that under section 782(d) of the Act the Department is required to notify a respondent of the nature of any deficiency and, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency. Yisheng claims that it was not so notified.

The petitioners argue that section 782(d) of the Act states that, once the respondent has been given a reasonable opportunity to respond to the questionnaire, the Department has the discretion to disregard all or part of the original or subsequent responses if it determines either that the supplemental response is not satisfactory or is not submitted within the applicable time limits.

Department's Position: We are required to notify a respondent of the nature of any deficiency and to provide an opportunity to remedy or explain the deficiency. On June 2, 2003, we sent Yisheng a detailed supplemental questionnaire in which we identified numerous deficiencies in its April 1, 2003, response and provided Yisheng an opportunity to correct those deficiencies. The company failed to correct one of the most significant deficiencies that we identified when it did not submit the FOP data in a timely manner.

Comment 6: Yisheng claims that, in accordance with section 782(c) of the Act, it notified the Department of its problems in submitting information in a timely manner in its June 20, 2003, and August 18, 2003, responses. Yisheng argues that the Department must modify

such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Yisheng argues further that the Department is required to assist a cooperative respondent once problems surface and that section 782(c)(2) of the Act directs the Department to take into account any difficulties experienced by interested parties, particularly small companies, and shall provide to such interested parties any assistance that is practicable in supplying such information.

Department's Position: For the reasons outlined in response to Comment 1, we do not find that Yisheng's June 20, 2003, response notified us of problems that might warrant modifying the reporting requirements. Also, as provided above, the Department believes it provided Yisheng with the appropriate opportunities to report necessary information and correct its deficiencies on the record. Yisheng's failure to provide necessary information in response is not the result of any fault of the Department.

## 2. Supplier is Not an Interested Party

Comment 7: Yisheng argues that its supplier, Yuyu, is not an interested party to the proceeding. Yisheng contends that neither the statute nor the regulations include, nor were intended by Congress to include, unaffiliated suppliers as parties subject to antidumping proceedings. Yisheng also argues that to interpret the Act in such a manner creates an almost impossible situation for nearly every respondent, especially for small companies. Yisheng argues that, as a result, the Department is incorrect in its treatment of these unaffiliated suppliers as interested parties.

Department Position: We consider the supplier in this new shipper review an interested party. As explained above, the definition of an interest party in section 771(9) of the Act states that interested party means, among other things, "a foreign manufacturer" or "producer" of

subject merchandise. According to the certification it provided in Yisheng's request for a new shipper review, Yuyu produced the subject merchandise. For this reason, as well as the rationale in Policy Memo 03.2 dated March 4, 2003, and the reasons stated above, we consider Yuyu an "interested party" as defined in the Act for purposes of this new shipper review. Further, in other determinations we have taken the position that suppliers can be considered "interested parties" whose failure to cooperate can fairly be attributed to a respondent. See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104, 71108 (December 20, 1999), and Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 68 FR 22676 (April 29, 2003). Accordingly, we continue to interpret the Act to include Yuyu as an "interested party" for purposes of this proceeding and find that the application of AFA is warranted because this "interested party" also did not act to the best of its ability in providing FOP data necessary to calculate an antidumping duty margin.

3. AFA Should Have Been Applied Only to the FOP Segment

Comment 8: Yisheng argues that the Department is required to use partial AFA because there are different levels of cooperation and the Department has a long history of using partial AFA where there is some information on the record, even if the party was not able to file all the information, as in this case.

Department's Position: Because the Department found that Yisheng did not act to the best of its ability (see response to comment 4 above), the Department was justified in its application of total AFA with respect to Yisheng in the Preliminary Results. The Department has used partial AFA in other cases to fill minor gaps in the record. When essential components

of a response are missing, such as an entire FOP response, however, the Department is justified in using total AFA. See Steel Authority of India, Ltd. v. United States, 2001 Ct. Int. Trade Lexis 159, Slip Op. 2001-149 (CIT 2001) (affirming the Department's selection of total AFA in its remand determination). In this case, it is not possible to calculate a margin for Yisheng without the FOP data. Thus, the application of total AFA is warranted.

#### Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margins for Yisheng in the Federal Register.

Agree \_\_\_\_\_ Disagree \_\_\_\_\_

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James J. Jochum  
Assistant Secretary  
for Import Administration

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(Date)